



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

INFORMAL ADVISORY OPINION NO. 2005-5

An individual filed a formal Charge with the Hawaii State Ethics Commission ("Commission") against a state elected official. The individual alleged that the official had misused the official's state position and state resources for campaign purposes by issuing to certain members of the public official material on one occasion that referenced the official's campaign web site address. The individual filing the Charge contended in the Charge that the inclusion of the reference to the official's campaign web site violated the State Ethics Code's provision barring the use of state resources for campaign purposes. In response to the Charge, the official filed an Answer with the Commission. In the Answer, in various ways, the official denied any wrongdoing.

The State Ethics Code is set forth in chapter 84 of the Hawaii Revised Statutes ("HRS"). The applicable sections of the State Ethics Code in this case were HRS sections 84-13 and 84-13(3). HRS section 84-13 reads, in its entirety, as follows:

§ 84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of the legislator's legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator believes may be affected by legislative action.

The first paragraph of HRS section 84-13 prohibits a state official from misusing his or her state position to give himself or herself any unwarranted advantage, treatment, or privilege. HRS section 84-13(3) specifically prohibits a state official from using state time, equipment, or facilities for any private business purpose. The Commission has long interpreted HRS section 84-13(3) to bar the use of any state resources for campaign purposes. Likewise, the Commission has long maintained that using state resources to further campaign purposes also violates the initial paragraph of HRS section 84-13.

The main task for the Commission in this case was to determine whether the web site referenced in the official material was indeed a campaign web site. After reviewing the web site, the Commission concluded that the web site was in fact a campaign web site.

In reaching its determination that the web site was a campaign web site, the Commission first noted that on the home page of the web site there was a photograph of people performing campaign work. The web site also had information about the official that was obviously campaign-related. The bottom of the home page of the web site stated that the web site was paid for by the official's campaign committee. There was other information on the web site that indicated that the web site was a campaign web site. The information on the web site did not reference any particular election, and thus, if viewed, would have appeared to relate to the official's upcoming campaign for state elective office.

That the web site was a campaign web site was also indicated by the official's "Application for nomination papers," which the official took out to run for office. In block 13 of the application form, the official listed the same web site address that appeared in the official material. In block 12 of the form, the official listed an e-mail address that referenced the same web site. It is the policy of the Office of Elections not to allow a state web site address or state e-mail address to be used on its application form, since the application form is for election purposes. It was evident that the application documents filed with the Office of Elections supported the conclusion that the web site address included in the official material was the official's campaign web site.

The Office of Elections also produces for each candidate a "candidate profile." The official's profile listed the official's web site in this profile, which was the same as the web site referenced in the official material. The official's e-mail address in the candidate profile also referenced the web site address in question. Again, the Office of Election does not allow state telephone numbers, state e-mail addresses, or state web site addresses to be used in a candidate profile.

Given the above, the Commission concluded that the web site referenced in the official material was indeed the official's campaign web site, and should not have been included or referred to in the official material. Members of the public who received the

official material would have been led by the material to the official's campaign web site, which promoted the official as a candidate, and, in this way, the official material was used for a campaign purpose, in violation of HRS sections 84-13 and 84-13(3).

The Commission noted that there was other information on the web site, such as prior official material, that was not, alone, campaign material. However, it was evident to the Commission that the official's web site was primarily a campaign web site.

The Commission has long maintained that official material made available to the public cannot contain references to campaign-related information or events, such as information about upcoming fundraisers, or other information that would serve to promote a candidate.

The Commission's executive director discussed with the official the fact that the web site clearly appeared to be a campaign web site, and therefore should not have been referenced in the official material. After discussions with the official, the official agreed to reimburse the State a sum of money proportionate to the cost to the State for the inclusion of the reference to the campaign web site in the official material.

The Commission agreed that if the official paid restitution to the State, it would conclude this case with an informal advisory opinion to the official. The Commission received a check from the official for the agreed-upon amount, which was deposited in the State's General Fund. The purpose of this informal advisory opinion was to inform the official and others that referencing a campaign web site in official material made available to the public is violative of the State Ethics Code. Again, the Commission has long maintained that campaigning must not take place at taxpayer expense, including campaigning via campaign information in official material from one's state office.

Because the official paid the restitution the Commission had deemed appropriate in this case, the Commission believed that this informal advisory opinion was appropriate in order to terminate this case at this point, and that further proceedings were not warranted.

The Commission believes that officials should exercise great care regarding the content of official material they produce for members of the public. Such material is provided for an official purpose, and is paid for by taxpayers. State officials may not receive a taxpayer-provided subsidy for their political campaigns.

Information that a state official or employee wishes to incorporate in an official material that might be construed as campaign-related should be brought to the attention of the Commission for review before the material is sent out at taxpayer expense.

Campaigns must be conducted in a fair manner. No state official or state employee should receive an unwarranted advantage at taxpayer expense in furtherance of his or her campaign for elective office.

Dated: Honolulu, Hawaii, May 18, 2005.

HAWAII STATE ETHICS COMMISSION

Dawn Suyenaga, Chairperson
Carl Morton, M.D., Vice Chairperson
Nadine Y. Ando, Commissioner
Robert R. Bean, Commissioner
Ronald R. Yoshida, Commissioner